TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1960

No. 67

ABRAHAM BRAUNFELD, ET AL., APPELLANTS,

ALBERT S. BROWN, COMMISSIONER OF POLICE OF THE CITY OF PHILADELPHIA, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

FILED APRIL 8, 1960
PROBABLE JURISDICTION NOTED MAY 23, 1960

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1960

No. 67

ABRAHAM BRAUNFELD, ET AL., APPELLANTS,

vs

ALBERT N. BROWN, COMMISSIONER OF POLICE OF THE CITY OF PHILADELPHIA, ET AL.

INDEX

	Original	Print
Record from the U.S.D.C. for the Eastern District of Pennsylvania		
Complaint	2	1
Exhibit "A"—Act No. 212 of the Pennsylvania Legislature	6	5
Motion of Pennsylvania Retailers' Association to intervene as defendant	11	6
Motion to dismiss complaint	15	7
Consent decree	27	8
Order granting leave to Pennsylvania Retailers' Association to intervene as a defendant	29	9
Final order vacating temporary consent decree and dismissing complaint	196	10
Amendment to final order	196a	11
Amended complaint	197	12
Exhibit "A"—Act No. 212 of the Pennsylvania Legislature	204	17
Motion to dismiss amended complaint	208	18
Final order dismissing amended complaint	210	18
Notice of appeal to the Supreme Court of the United States	212	19
Clerk's certificate (omitted in printing)	216	21
Order noting probable jurisdiction	217	21
Order of Substitution	218	22

RECORD PRESS, PRINTERS, NEW YORK, N. Y., JULY 21, 1960

[fol. 2] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 26945

ABRAHAM BRAUNFELD
327 South Street
Philadelphia, Pennsylvania

ISAAC FRIEDMAN
759 South 4th Street
Philadelphia, Pennsylvania

ALTER DIAMENT
763 South 4th Street
Philadelphia, Pennsylvania

S. DAVID FRIEDMAN
2247 E. Williams Avenue
Philadelphia, Pennsylvania
and
JOSEPH R. FRIEDMAN
2247 E. Williams Avenue
Philadelphia, Pennsylvania

vs.

THOMAS J. GIBBONS
City Hall
Philadelphia, Pennsylvania
and
VICTOR H. BLANC
City Hall
Philadelphia, Pennsylvania

COMPLAINT—Filed September 4, 1959

I. Statement as to Jurisdiction

1. This is a civil action brought by the plaintiffs for a preliminary and permanent injunction to prevent the depri-

vation, under color of Pennsylvania law, of certain rights, privileges and immunities secured to the plaintiffs by the Constitution of the United States, as hereinafter more fully set forth. The suit also seeks a judgment declaring the aforesaid Pennsylvania law unconstitutional.

2. The suit seeks the convening of a three-judge District Court pursuant to Section 2284 of the Judicial Code. Jurisdiction is conferred upon this Court pursuant to 28 U.S. Code, Section 1343.

3. The defendants reside within the Eastern District of Pennsylvania, which is therefore the proper venue of this action by virtue of 28 U.S. Code, Section 1391(b).

[fol. 3] 4. Plaintiffs all reside in Philadelphia, Pennsylvania, at the addresses appearing in the caption hereof.

5. Each of the aforesaid plaintiffs is the owner and operator of a store within the City of Philadelphia which sells at retail certain goods, specifically: Abraham Braunfeld owns and operates a retail store at 327 South Street at which he sells clothing and wearing apparel for children; plaintiff Isaac Friedmann owns and operates a retail store at 759 South 4th Street at which he sells home furnishings, to wit, draperies and slipcovers; Alter Diament owns and operates a retail store at 763 South 4th Street at which he sells home furnishings, to wit, draperies and slipcovers; S. David Friedman and Joseph R. Friedman own and operate a retail store at 2247 E. Williams Avenue at which they sell wearing apparel, to wit, shoes.

6. The defendant Thomas J. Gibbons, is the Commissioner of Police of the City of Philadelphia, and the defendant Victor H. Blanc is the District Attorney of the City of Philadelphia. The defendants have the responsibility for the enforcement within the City of Philadelphia of the Penal Code of the Commonwealth of Pennsylvania, including Act No. 212 of August 10, 1959, P.L. ——, —— P.S. ——.

II. Statute Involved

7. This suit is brought to declare the unconstitutionality of and enjoin the enforcement of Act No. 212 of August

10, 1959, P.L. ——, —— P.S. ——; which, by its terms, inter alia, forbids the sale on Sunday of the aforementioned goods sold by the plaintiffs. A copy of the said statute is hereunto annexed and marked Exhibit "A".

III. Factual Allegations

8. Each of the plaintiffs herein is an observant and orthodox member and adherent of the Jewish faith. The laws of said faith, particularly the Fourth Commandment of the Decalogue, require a total abstention from business and all manner of work from nightfall Friday until nightfall Saturday each week; this period constituting the Sabbath of the Jewish religion.

9. Each of the plaintiffs herein always has abstained, [fol. 4] and at the present time continues to abstain from business and all manner of work on the said Jewish Sabbath and keeps his store regularly closed during that period.

10. The defendants have announced that they will enforce said statute against all persons keeping their places of business open on Sunday. The plaintiffs herein therefore are immediately faced with the threat of a prosecution by the defendants for violation of the said statute should they keep their places of business open on Sunday.

11. The plaintiffs have heretofore kept their places of business open on Sunday and intend to continue to do so, thereby subjecting themselves to prosecution under the said statute unless such prosecution is enjoined by this Court and the statute declared unconstitutional.

12. Each of the plaintiffs does a substantial amount of business on Sundays, and their ability to earn a livelihood will be greatly impaired by closing their business establishments on Sundays.

First Count

13. The aforesaid Pennsylvania statute, Act No. 212 of August 10, 1959, P.L. ——, —— P.S. ——, and the enforcement thereof as announced and threatened by the defendants, are in violation of the First and Fourteenth Amend-

ments to the United States Constitution in that the said statute constitutes a law respecting an establishment of religion and are unconstitutional as against the plaintiffs herein.

Second Count

14. The said statute, Act No. 212 of August 10, 1959, P.L. ——, —— P.S. ——, and the enforcement thereof as announced and threatened by the defendants are in violation of the First and Fourteenth Amendments to the United States Constitution in that the said statute constitutes a law prohibiting the free exercise of religion, and are unconstitutional against the plaintiffs herein.

[fol. 5] Third Count

15. The specification of the goods that are forbidden for sale on Sunday in the said statute and the exclusion of all other goods is completely irrational and arbitrary and bear no rational relationship to any legislative objective within the constitutional competence of the Commonwealth of Pennsylvania and the said statute therefore is unconstitutional as against the plaintiffs herein, in that it denies to them the equal protection of the law and deprives them of their property without due process in violation of the Fourteenth Amendment to the United States Constitution.

Irreparable Injury

16. If the said statute is enforced against the plaintiffs as heretofore set forth, the plaintiffs will suffer irreparable injury for the redress of which they have no adequate remedy at law.

Prayer for Relief

Wherefore, plaintiffs Abraham Braunfeld, Isaac Friedman, Alter Diament, S. David Friedman and Joseph R. Friedman pray this Court for a preliminary, and after trial of this suit, a permanent injunction of the enforcement, operation and execution of Act No. 212 of August 10, 1959, P.L. ——, —— P.S. ——; and for a declaration

that said statute and its enforcement are unconstitutional as against the plaintiffs herein, and for such other and further relief as the Court may deem just and proper.

Klinger and Mann, By: Theodore R. Mann, 515 Robinson Building, Phila., Pa.

Narin & Garfinkel, By: Marvin Garfinkel, 1301 Packard Building, Phila., Pa.

Walter Rabin, 2044 Chestnut Street, Phila., Pa.

Leo Pfeffer, 15 East 84th Street, New York, New York.

[fol. 6]

EXHIBIT "A" TO COMPLAINT

ACT No. 212

Approved August 10, 1959

AN ACT

Amending the act of June 24 1939 (P L 872) entitled "An act to consolidate amend and revise the penal laws of the Commonwealth" prohibiting certain business activities on Sunday

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows

Section 1 The act of June 24 1939 (P L 872) known as "The Penal Code" is amended by adding after section 699.9 a new section to read

Section 699.10 Selling Certain Personal Property on Sunday Whoever engages on Sunday in the business of selling or sells or offers for sale ON SUCH DAY at retail clothing and wearing apparel clothing accessories furniture housewares home business or office furnishings household business or office appliances hardware tools paints building and lumber supply materials jewelry silverware watches clocks luggage musical instruments and recordings

or toys EXCLUDING NOVELTIES AND SOUVENIRS shall upon conviction thereof in a summary proceeding for the first offense be sentenced to pay a fine of not exceeding one hundred dollars ($100) and for the second or any subsequent offense committed within one year after conviction for the first offense be sentenced to pay a fine of not exceeding two hundred dollars ($200) or undergo imprisonment not exceeding thirty days in default thereof

Each separate sale or offer to sell shall constitute a separate offense

Information charging violations of this section shall be brought within seventy-two hours after the commission of the alleged offense and not thereafter

Section 2 This act shall take effect in thirty days

[fol. 11] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

[Title omitted]

MOTION OF PENNSYLVANIA RETAILERS' ASSOCIATION TO INTERVENE AS DEFENDANT—Filed September 11, 1959

Pennsylvania Retailers' Association, by its attorneys, Arthur Littleton and W. James MacIntosh, respectfully moves the court for an order permitting it to intervene as a party defendant in this action and to file an Answer in order to assert defenses in such proposed Answer, copy of which is attached hereto, for the following reasons:

1. Pennsylvania Retailers' Association (herein called "Association") is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania, whose members are owners or officers of retail stores throughout the Commonwealth of Pennsylvania. Its members operate hundreds of retail stores and employ thousands of persons in their retail operations, and have a vital in-

terest in whether or not business establishments in Pennsylvania will be permitted to operate on Sunday.

2. This action seeks to convene a three-judge court pursuant to the provisions of 28 U.S.C. 2281 and 2284 for the [fol. 12] purpose of passing upon the constitutionality of the Pennsylvania Act of Assembly No. 212 approved August 10, 1959, P.L. , P.S. , and further seeks injunctive relief restraining the defendants from enforcing said laws against plaintiffs.

3. Association has a substantial interest in the subject matter of this action, and the representation of its interest as an association of hundreds of Pennsylvania retail merchants by the present defendant is or may be inadequate. In addition, the Association's interest and the within action have questions of law and fact involving the constitutionality of the above-mentioned statute in common.

4. Intervention by the Association will not delay or prejudice the adjudication of the rights of the original parties.

W. James MacIntosh, Arthur Littleton, Attorneys for Pennsylvania Retailers' Association.

Dated: September , 1959

Morgan, Lewis & Bockius, Of Counsel.

[fol. 15] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

[Title omitted]

MOTION TO DISMISS COMPLAINT—Filed September 11, 1959

Defendants, for whom the City Solicitor has entered an appearance, move the Court as follows:

1. To dismiss the action because the Complaint fails to state a claim against the defendants upon which relief can be granted.

2. To dismiss the action because the statute which is the subject matter of this action is constitutional on its face.

Thomas A. Masterson, Deputy City Solicitor; David Berger, City Solicitor, Attorneys for Defendants.

[fol. 27] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ABRAHAM BRAUNFELD, et al.

v.

THOMAS J. GIBBONS and VICTOR H. BLANC

CONSENT DECREE—September 11, 1959

Whereas, in the above captioned cause a hearing was held on the 11th day of September, 1959, to determine whether the defendants should be temporarily restrained, until a further hearing for a preliminary injunction before a three-judge district court, from enforcing Act No. 212 of the Commonwealth of Pennsylvania, of August 10, 1959, and notice of said hearing was served upon the defendants, and said defendants appeared at said hearing; and

Whereas, at the said hearing the court suggested that the interest of justice would be served by the entry of an order by stipulation which would preserve the status quo until the court had an opportunity to determine the legal issues raised by the litigation.

Now, Therefore, this 11th day of September, 1959 upon approval of this Court it is stipulated by and between Theodore R. Mann, Esquire, Marvin Garfinkel, Esquire, Walter Rabin, Esquire, and Leo Pfeffer, Esquire, Attorneys for plaintiffs, and David Berger, City Solicitor and Thomas A. Masterson, Deputy City Solicitor, Attorneys for the

[fol. 28] defendants, that the defendants, Thomas J. Gibbons, Commissioner of Police of Philadelphia and Victor H. Blanc, District Attorney of Philadelphia be and they hereby are restrained until further order of this court from directly or indirectly enforcing or being a party to the enforcement of or in any way aiding the enforcement of Act No. 212 approved August 10, 1959 of the Commonwealth of Pennsylvania, against Abraham Braunfeld, Isaac Friedman, Alter Diament, S. David Friedman, Joseph R. Friedman, plaintiffs herein.

Theodore R. Mann, Marvin Garfinkel, Walter Rabin, Leo Pfeffer, Attorneys for plaintiffs.

David Berger, City Solicitor; Thomas A. Masterson, Deputy City Solicitor, Attorneys for Defendants.

Approved: So Ordered, J. Cullen Ganey, J.

[fol. 29] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

[Title omitted]

ORDER GRANTING LEAVE TO PENNSYLVANIA RETAILERS' ASSOCIATION TO INTERVENE AS A DEFENDANT—
September 11, 1959

This matter came on for hearing upon motion of Pennsylvania Retailers' Association for leave to intervene in the above entitled action as a party defendant, and it appearing to the court that said Association has an interest in the above entitled action sufficient to warrant it to become a party to the action it is Ordered:

That Pennsylvania Retailers' Association is granted leave to intervene in said action as a party defendant.

Dated this 11th day of September, 1959.

J. Cullen Ganey, U. S. District Judge.

[fol. 196]

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 26,945

ABRAHAM BRAUNFELD, ISAAC FRIEDMAN, ALTER DIAMENT, S. DAVID FRIEDMAN and JOSEPH R. FRIEDMAN, Plaintiffs,

—v.—

THOMAS J. GIBBONS and VICTOR H. BLANC, Defendants.

Present: Hastie, *Circuit Judge;* Ganey, *Chief District Judge;* and Egan, *District Judge.*

FINAL ORDER VACATING TEMPORARY CONSENT DECREE AND DISMISSING COMPLAINT—December 7, 1959

This cause having been heard on defendants' motion to dismiss the complaint; and the court having fully considered the several briefs and arguments which have been submitted; and this court finding itself in full accord with the reasoning and conclusions of another statutory court of this District in *Two Guys from Harrison-Allentown, Inc.* v. *McGinley*, No. 25626, decided December 1, 1959, concerning the constitutionality of the Pennsylvania Act No. 212, approved August 10, 1959, prohibiting retail selling of enumerated commodities on Sunday; it is this 7th day of December, 1959,

Ordered, that the Consent Decree issued in this cause on September 11, 1959, temporarily restraining the defendants from enforcing against the plaintiffs Pennsylvania Act No. 212, approved August 10, 1959, be, and it is hereby, vacated and dissolved; it is further

Ordered, that the complaint herein seeking a permanent injunction against the enforcement of Pennsylvania Act

No. 212, approved August 10, 1959, be, and it is hereby, dismissed.

William H. Hastie, Circuit Judge.

J. Cullen Ganey, Chief District Judge.

Thomas C. Egan, District Judge.

[fol. 196a] (Stamp—Sent by Gilbert W. Ludwig, Clerk, United States District Court, Eastern District of Pennsylvania at Philadelphia 7.)

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 26945

ABRAHAM BRAUNFELD, ISAAC FRIEDMAN, ALTER DIAMENT, S DAVID FRIEDMAN and JOSEPH R. FRIEDMAN, Plaintiffs,

v.

THOMAS J. GIBBONS and VICTOR H. BLANC, Defendants.

Present: Hastie, *Circuit Judge*; Ganey, *Chief District Judge*; and Egan, *District Judge*.

AMENDMENT OF FINAL ORDER—December 10, 1959

The final order dismissing the complaint as filed in this cause on December 7, 1959, is hereby amended by striking the period at the end thereof and adding "without prejudice to the filing of an amended complaint".

William H. Hastie, Circuit Judge.

J. Cullen Ganey, Chief District Judge.

Thomas C. Egan, District Judge.

December 10, 1959

[fol. 197] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA
Civil Action No. 26945

ABRAHAM BRAUNFELD
327 South Street
Philadelphia, Pennsylvania

ISAAC FRIEDMAN
759 South 4th Street
Philadelphia, Pennsylvania

ALTER DIAMENT
763 South 4th Street
Philadelphia, Pennsylvania

S. DAVID FRIEDMAN
2247 E. Williams Street
Philadelphia, Pennsylvania
and
JOSEPH R. FRIEDMAN
2247 E. Williams Street
Philadelphia, Pennsylvania

vs.

THOMAS J. GIBBONS
City Hall
Philadelphia, Pennsylvania
and
VICTOR H. BLANC
City Hall
Philadelphia, Pennsylvania

AMENDED COMPLAINT—Filed December 11, 1959

I. Statement as to Jurisdiction

1. This is a civil action brought by the plaintiffs for a preliminary and permanent injunction to prevent the deprivation, under color of Pennsylvania law, of certain rights, privileges and immunities secured to the plaintiffs by the [fol. 198] Constitution of the United States, as hereinafter more fully set forth. The suit also seeks a judgment declaring the aforesaid Pennsylvania law unconstitutional.

2. The suit seeks the convening of a three-judge District Court pursuant to Section 2284 of the Judicial Code. Jurisdiction is conferred upon this Court pursuant to 28 U.S. Code, Section 1343.

3. The defendants reside within the Eastern District of Pennsylvania, which is therefore the proper venue of this action by virtue of 28 U.S. Code, Section 1391(b).

4. Plaintiffs all reside in Philadelphia, Pennsylvania, at the addresses appearing in the caption hereof.

5. Each of the aforesaid plaintiffs is the owner and operator of a store within the City of Philadelphia which sells at retail certain goods, specifically: Abraham Braunfeld owns and operates a retail store at 327 South Street at which he sells clothing and wearing apparel for children; plaintiff Isaac Friedman owns and operates a retail store at 759 South 4th Street at which he sells home furnishings, to wit, draperies and slipcovers; Alter Diament owns and operates a retail store at 763 South 4th Street at which he sells home furnishings, to wit, draperies and slipcovers; S. David Friedman and Joseph R. Friedman own and operate a retail store at 2247 E. Williams Street at which they sell wearing apparel, to wit, shoes.

[fol. 199] 6. The defendant Thomas J. Gibbons, is the Commissioner of Police of the City of Philadelphia, and the defendant Victor H. Blanc is the District Attorney of the City of Philadelphia. The defendants have the responsibility for the enforcement within the City of Philadelphia of the Penal Codes of the Commonwealth of Pennsylvania, including Act No. 212 of August 19, 1959, P.L. ——, —— P.S. ——.

II. Statute Involved

7. This suit is brought to declare the unconstitutionality of and enjoin the enforcement of Act No. 212 of August

10, 1959, P.L. ——, —— P.S. ——, which, by its terms, inter alia, forbids the sale on Sunday of the aforementioned goods sold by the plaintiffs. A copy of the said statute is hereunto annexed and marked Exhibit "A".

III. Factual Allegations

8. Each of the plaintiffs herein is an observant and Orthodox member and adherent of the Jewish faith. The laws of said faith, particularly the Fourth Commandment of the Decalogue, require a total abstention from business and all manner of work from nightfall Friday until nightfall Saturday each week, this period constituting the Sabbath of the Jewish religion; and forbid its adherents to hire other employees regardless of the faith of such employees, to work during this same period.

[fol. 200] 9. The foregoing religious requirement of Sabbath observance occupies a central and primary position in the scheme of religious observances of Orthodox Judaism, and one who does not observe the Sabbath in the manner set forth cannot be an Orthodox Jew.

10. Each of the plaintiffs herein always has abstained, and at the present time continues to abstain from business and all manner of work on the said Jewish Sabbath and keeps his store regularly closed during that period.

11. The defendants have announced that they will enforce said statute against all persons keeping their places of business open on Sunday. The plaintiffs herein therefore are immediately faced with the threat of a prosecution by the defendants for violation of the said statute should they keep their places of business open on Sunday.

12. The plaintiffs have heretofore kept their places of business open on Sunday. If they continue to do so, they will subject themselves to prosecution under the said statute, unless such prosecution is enjoined by this Court and the statute is declared unconstitutional.

13. In the general business area in which the plaintiffs do business, the night and day which the plaintiffs voluntarily stay closed because of their religious convictions,

to wit, Friday night and Saturday, are the night and day of the week on which the greatest volume of business is done by plaintiffs' competitors.

[fol. 201] 14. The volume of business which each of the plaintiffs does on Sunday is substantially less than the volume of business which each of the plaintiffs would do if he stayed open on Saturday or on Friday night and Saturday.

15. Each of the plaintiffs does a substantial amount of business on Sundays, and the ability of the plaintiffs to earn a livelihood will be greatly impaired by closing their business establishment on Sunday.

16. Plaintiff, Abraham Braunfeld, will be unable to continue in his business if he may not stay open on Sunday and he will thereby lose his capital investment.

First Count

17. The aforesaid Pennsylvania statute, Act No. 212 of August 10, 1959, P.L. ——, —— P.S. ——, and the enforcement thereof as announced and threatened by the defendants, are in violation of the First and Fourteenth Amendments to the United States Constitution in that the said statute constitutes a law respecting an establishment of religion and are unconstitutional as against the plaintiffs herein.

Second Count

18. The said statute, Act No. 212 of August 10, 1959, P.L. ——, —— P.S. ——, and the enforcement thereof as announced and threatened by the defendants put to the plaintiff, Abraham Braunfeld, the choice of giving up his [fol. 202] business and capital investment or giving up his faith and put to the other plaintiffs the choice of giving up a substantial part of their income or giving up their faith, and therefore prohibiting the free exercise of their religion, in violation of the First and Fourteenth Amendments of the United States Constitution as applied to the plaintiffs herein.

Third Count

19. The specification of the goods that are forbidden for sale on Sunday in the said statute and the exclusion of all other goods is completely irrational and arbitrary and bear no rational relationship to any legislative objective within the constitutional competence of the Commonwealth of Pennsylvania and the said statute therefore is unconstitutional as against the plaintiffs herein, in that it denies to them the equal protection of the law and deprives them of their property without due process in violation of the Fourteenth Amendment to the United States Constitution.

Irreparable Injury

20. If the said statute is enforced against the plaintiffs as heretofore set forth, the plaintiffs will suffer irreparable injury for the redress of which they have no adequate remedy at law.

[fol. 203]

Prayer for Relief

Wherefore, plaintiffs Abraham Braunfeld, Isaac Friedman, Alter Diament, S. David Friedman and Joseph R. Friedman pray this Court for a preliminary, and after trial of this suit, a permanent injunction of the enforcement, operation and execution of Act No. 212 of August 10, 1959, P.L. ——, —— P.S. ——; and for a declaration that said statute and its enforcement are unconstitutional as against the plaintiffs herein, and for such other and further relief as the Court may deem just and proper.

Klinger & Mann, By: Theodore R. Mann, 515 Robinson Building, Phila., Pa.

Narin & Garfinkel, By: Marvin Garfinkel, 1301 Packard Building, Phila., Pa.

Walter Rabin, 2044 Chestnut Street, Phila., Pa.

[fol. 204]

EXHIBIT "A" TO AMENDED COMPLAINT

ACT NO. 212

Approved August 10, 1959

AN ACT

Amending the act of June 24 1939 (P L 872) entitled "An act to consolidate amend and revise the penal laws of the Commonwealth" prohibiting certain business activities on Sunday

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows

Section 1 The act of June 24 1939 (P L 872) known as "The Penal Code" is amended by adding after section 699.9 a new section to read

Section 699.10 Selling Certain Personal Property on Sunday Whoever engages on Sunday in the business of selling or sells or offers for sale ON SUCH DAY at retail clothing and wearing apparel clothing accessories furniture housewares home business or office furnishings household business or office appliances hardware tools paints building and lumber supply materials jewelry silverware watches clocks luggage musical instruments and recordings or toys EXCLUDING NOVELTIES AND SOUVENIRS shall upon conviction thereof in a summary proceeding for the first offense be sentenced to pay a fine of not exceeding one hundred dollars ($100) and for the second or any subsequent offense committed within one year after conviction for the first offense be sentenced to pay a fine of not exceeding two hundred dollars ($200) or undergo imprisonment not exceeding thirty days in default thereof

Each separate sale or offer to sell shall constitute a separate offense

Information charging violations of this section shall be brought within seventy-two hours after the commission of the alleged offense and not thereafter

Section 2 This act shall take effect in thirty days

[fol. 208] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

[Title omitted]

MOTION TO DISMISS AMENDED COMPLAINT—Filed December 11, 1959

Defendants, for whom the City Solicitor has entered an appearance, move the Court as follows:

1. To dismiss the action because the Amended Complaint fails to state a substantial Federal question.

2. To dismiss the action because the Amended Complaint fails to state a claim against the defendants upon which relief can be granted.

3. To dismiss the action because the statute which is the subject matter of this action is constitutional on its face.

Thomas A. Masterson, Deputy City Solicitor; David Berger, City Solicitor, Attorneys for Defendants.

[fol. 210] [File endorsement omitted]

[Handwritten Notations

Copies to: Thos. Masterson. Thos. Mann, Benj. Quigg, Jr.
Phoned: Thos. Masterson, Thos. Mann, Benj. Quigg, Jr.]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ABRAHAM BRAUNFELD, ISAAC FRIEDMAN, ALTER DIAMENT, S. DAVID FRIEDMAN and JOSEPH R. FRIEDMAN, Plaintiffs,

—v.—

THOMAS J. GIBBONS and VICTOR H. BLANC, Defendants.

Present: Hastie, *Circuit Judge;* Ganey, *Chief District Judge* and Egan, *District Judge.*

FINAL ORDER DISMISSING AMENDED COMPLAINT—December 16, 1959

This cause having been submitted on the Amended Complaint and defendants' motion to dismiss that complaint;

and this court finding itself in full accord with the reasoning and conclusions of another statutory court of this district in *Two Guys From Harrison-Allentown, Inc.* v. *McGinley*, No. 25626, decided December 1, 1959, concerning the constitutionality of Pennsylvania Act No. 212, approved August 10, 1959, prohibiting retail selling of enumerated commodities on Sunday; and the court finding nothing in the Amended Complaint herein to make the legal ruling in the aforesaid case No. 25626 inapplicable; it is this 16th day of December, 1959,

Ordered that the complaint herein seeking a permanent injunction against the enforcement of Pennsylvania Act No. 212, approved August 10, 1959, be and it is hereby dismissed.

William H. Hastie, Circuit Judge.

J. Cullen Ganey, Chief District Judge.

Thomas C. Egan, District Judge.

[fol. 212] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA
Civil Action No. 26,945

ABRAHAM BRAUNFELD
ISAAC FRIEDMAN
ALTER DIAMENT
S. DAVID FRIEDMAN and
JOSEPH R. FRIEDMAN, Plaintiffs,

v.

THOMAS J. GIBBONS and VICTOR H. BLANC, Defendants,

and

PENNSYLVANIA RETAILERS' ASSOCIATION, Intervenor.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed February 11, 1960

Notice is hereby given that Abraham Braunfeld, Isaac Friedman, Alter Diament, S. David Friedman, and Joseph

R. Friedman, plaintiffs above named, hereby appeal to the Supreme Court of the United States from the final order dismissing the Complaint, entered in this action on December 16, 1959.

1. This appeal is taken pursuant to 28 U.S.C., Sec. 1253.

[fol. 213] 2. The clerk will please prepare a transcript of the entire record in this cause for transmission to the Clerk of the Supreme Court of the United States.

3. The following questions are presented by this appeal:

a. Whether the enforcement of Pennsylvania Act No. 212, approved August 10, 1959 (which prohibits retail selling of enumerated commodities on Sunday), against retailers whose religion forbids them from engaging in work and commercial activity, and from employing others to engage in commercial activity for them, on Friday evening and Saturday, and who are in open competition with other retailers who keep open their business establishments on Friday evening and Saturday, interferes with their free exercise of religion in violation of the 1st Amendment or the due process clause of the 14th Amendment to the United States Constitution, where the loss of business resulting from the enforcement thereof puts them to the choice of going out of business or violating their religious obligation.

b. Whether the enforcement of Pennsylvania Act No. 212, approved August 10, 1959 (which prohibits retail selling of enumerated commodities on Sunday), against retailers whose religion forbids them from engaging in work and commercial activity, and from employing others to engage in commercial activity for them, on Friday evening and Saturday, and who are in open competition with other retailers who keep open their business establishments on [fol. 214] Friday evening and Saturday, interferes with their free exercise of religion in violation of the 1st Amendment or the due process clause of the 14th Amendment to the United States Constitution.

c. Whether Pennsylvania Act No. 212, approved August 10, 1959 (which prohibits retail selling of enumerated com-

modities on Sunday), and the enforcement thereof, violate the proscription against an establishment of religion in the 1st Amendment or in the due process clause of the 14th Amendment to the United States Constitution.

d. Whether Pennsylvania Act No. 212, approved August 10, 1959 (which prohibits retail selling of enumerated commodities on Sunday), is arbitrarily selective in the commodities and businesses affected and, therefore, violative of the equal protection clause or the due process clause of the 14th Amendment to the United States Constitution.

Stephen B. Narin, Esq., Attorney for Appellants, 1301 Packard Building, 15th and Chestnut Streets, Philadelphia, Pa.

[fol. 215] Proof of Service (omitted in printing).

[fol. 216] Clerk's Certificate to Foregoing Transcript (omitted in printing).

[fol. 217]

Supreme Court of the United States

No. 845, October Term, 1959

Abraham Braunfeld, et al., Appellants,

vs.

Thomas J. Gibbons, Commissioner of Police of the City of Philadelphia, et al.

Appeal From the United States District Court for the Eastern District of Pennsylvania

---

Order Noting Probable Jurisdiction—May 23, 1960

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted. The case is transferred to the summary calendar and set for argument immediately following No. 532.

May 23, 1960

[fol. 218]

SUPREME COURT OF THE UNITED STATES

No. 67, October Term, 1960

ABRAHAM BRAUNFELD, et al., Appellants,

vs.

THOMAS J. GIBBONS, Commissioner of Police of the City of Philadelphia, et al.

ORDER OF SUBSTITUTION—October 24, 1960

On Consideration of the motion to substitute Albert N. Brown in the place of Thomas J. Gibbons as a party appellee and to correct and amend title and caption to show Pennsylvania Retailers' Association as a party appellee in this case,

It Is Ordered by this Court that the said motion be, and the same is hereby, granted.